

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 21-30 are pending in the present application, Claims 21-26 having been amended without the introduction of new matter. The amendments to Claims 21-26 go only to matters of form. Thus, no new search is required.

In the outstanding Office Action, Claims 21-30 were rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over Claims 3, 13, 21, and 25 of U.S. Patent No. 6,519,413.

With respect to the rejections based on non-statutory double patenting, Applicants respectfully submit that Claims 21-30 are patentably distinct from the claims of U.S. Patent No. 6,519,413.

However, to expedite progress toward allowance, a Terminal Disclaimer is filed herewith. Thus, Applicant submits the outstanding rejections of the claims have been overcome.

The filing of a Terminal Disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. The "filing of a Terminal Disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 U.S.P.Q.2d 1392 (Fed. Cir. 1991). Accordingly, Applicants filing of the attached disclaimer is provided for facilitating a timely resolution to prosecution only, and should not be interpreted as an admission as to the merits of the obviated rejection.

With respect to the rejection of Claims 27-30, Applicants note that the Examiner may take official notice of facts outside of the record which are capable of instant and

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unquestionable demonstration as being "well-known" in the art. *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). Applicants do not consider the features for which Official Notice were taken to be "of such notorious character that official notice can be taken." Therefore Applicants traverse this assertion.

Accordingly, in view of the present amendment and the previous discussion, no further issues are believed to be outstanding and the present application is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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